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Improving consumer access to electricity information

2degrees, Electric Kiwi, Flick Electric and Pulse Energy (the Independent Electricity Retailers) welcome the Electricity Authority (Authority) and Ministry of Business, Innovation and Enterprise's (MBIE) respective consultations on access to consumer data/consumer data rights (CDR).¹ We have appreciated the Authority and MBIE staff engagement with us on this matter.

The Independent Electricity Retailers fully support the rights of consumers to access their own electricity consumption data, including at the granular half-hour level and injection/offtake data. Consumers should have easy access to their electricity consumption data.

It will be important the data access regime is efficient and there isn't duplication or boundary issues between the requirements of the Customer and Product Data legislation (including related regulation) and the Electricity Industry Participant Code (Code).

Consumer access to consumption data is likely to become increasingly important

The increasing prevalence of time-of-use (TOU) pricing and offers involving periods of 'free' power etc means access to consumption data is becoming increasingly important for determining which retailer and which pricing plans will best suit a particular consumer, as well as the potential to save money by load-shifting/investing in solar PV and batteries.

For example, working out the benefits of TOU options requires half-hour consumption data whereas determining whether a low or standard fixed charge tariff option is better is a binary question based on annual consumption data.

Duplication needs to be avoided

It would be helpful if the Authority and MBIE detailed more clearly what is specifically being done to avoid duplication, gaps and overlaps in the respective data access regimes that are being developed. The MBIE consultation mentions this issue at a high-level while the Authority consultation does not mention the MBIE CDR review.²

There are clear overlaps between MBIE's CDR and the Authority's data work programme, along with related matters such as the Authority's Consumer Care Guidelines/proposed Consumer Care

¹ Electricity Authority, Consultation paper, Code amendment omnibus four: September 2024, 3 September 2024 and MBIE, Discussion paper, Exploring a consumer data right for the electricity sector, August 2024.

² The Authority's subsequent consultation on improved data collection from retailers does discuss the CDR regime https://www.ea.govt.nz/documents/5757/Improving_retail_market_monitoring_amended_information_notice_and_updated_analysis.pdf.

Obligations (e.g. in relation to provision of information on pricing plans/fees) and the Authority's contracted price comparison and switching service (currently provided by Powerswitch) which could potentially utilise CDR data.

The MBIE consultation proposals for half-hourly data, for example, mirror current Code obligations: "We have heard in our targeted engagement that half hourly consumption data will be key to enabling consumers to make more informed/timely decisions around electricity. We suggest that consumption data going back two years should be able to be requested in line with the current Code."

We note Meridian's concern "it is not clear ... how the Electricity Industry Participation Code and proposed Bill will interact" and "Businesses would benefit from clarity sooner rather than later to understand the legal framework that will apply and how it will be administered."³ The TCF has raised similar concerns that Commerce Commission telecommunications initiatives and powers have similar policy intent as the MBIE CDR proposals.⁴

We agree with BusinessNZ that "Any data rights that are introduced must take into account ... industry-specific arrangements" already in place.⁵ It is also important the Authority and MBIE's respective evaluations of the proposals take into account the reforms each other are proposing and potential benefits are not double counted.⁶

Clear and transparent co-ordination between regulatory agencies is essential

It would probably be useful for the Authority and MBIE to operate a joint project team to progress the data access work going forward.

We welcome the MBIE commentary that "there are synergies between MBIE's CDR and the Authority's data work programme" and "The Authority and MBIE are working together closely as their respective work programmes progress to minimise or avoid duplication, gaps and overlaps"⁷ but greater specificity is needed. We also welcome the Authority's commentary, subsequent to the data access consultation, that it "is working closely with government to coordinate on a potential CDR for electricity".⁸

If the two agencies work well together, the Authority's work could potentially allow for potential benefits of consumer data access to be realised earlier, as well as providing a stepping stone towards potentially broader/more ambitious MBIE CDR reform. If the reforms are not well managed and co-ordinated it could result in unnecessary compliance costs and confused boundary issues.

The Authority and MBIE should be clear about the limitations of what the Authority can do under its broad Code making powers, and what additional benefits could be unlocked through the legislative reforms. For example, MBIE has suggested the legislated CDR regime could have additional benefits

³ <https://www.mbie.govt.nz/dmsdocument/27745-meridian-submission-customer-and-product-data-bill-pdf>

⁴ <https://www.mbie.govt.nz/dmsdocument/27748-nz-telecommunications-forum-submission-customer-and-product-data-bill-pdf>

⁵ <https://www.mbie.govt.nz/dmsdocument/13286-submission-by-businessnz-to-the-ministry-of-business-innovation-employment-on-the-options-for-establishing-a-consumer-data-right-in-new-zealand-discussion-document-pdf>

⁶ For example, the Authority state that one of the benefits of its proposals is: "The proposed amendment to address problem 1 ... provides a clear signal to electricity retailers (and the industry at large) that timely access to a consumer's electricity information is a cornerstone of the electricity market of the future, and as such industry participants who deal with consumer electricity information should be investing in technologies and processes that facilitate automated transfers of such information." It is reasonable to conclude that, absent the Authority's proposals, the MBIE CDR proposals would provide this clear signal to electricity retailers.

⁷ MBIE, Discussion paper, Exploring a consumer data right for the electricity sector, AUGUST 2024, paragraph 43.

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https://www.ea.govt.nz/documents/5757/Improving_retail_market_monitoring_amended_information_notice_and_updated_analysis.pdf

“such as accreditation processes and register, a bespoke compliance/penalty regime, and greater interoperability with other sectors, which the Bill contemplates.”

Integration of consumer data access with the Authority’s pricing comparison and switching service is required to realise a big portion of the potential benefits

We support the Authority’s objective that consumer data access evolves to a point where “a consumer can automatically access their own consumption data or authorise another entity to access their data on their behalf, in real time so that they can seamlessly compare electricity plans and choose the best plan for their circumstances” [emphasis added] and “to ensure that consumers have access to simple processes and accurate information to support them to choose the right electricity plan for their household or business”.⁹

MBIE has a similar “vision” in which there is “near instantaneous transfer, download and access of data” and “Any consumer of electricity should be able to request or consent to their data being exchanged from a designated data holder and supply this data to third parties or accredited requestors to support consumer decision making and use this data in combination with product data to make informed choices.”

The Authority and MBIE should jointly explore integration of data access with the Authority’s contracted comparison and switching service/website (currently provided by Powerswitch). This is critical for the potential benefits of consumer data access to be fully realised; in particular, assisting consumers to determine whether they should switch retailer/which pricing plan would best suit their particular circumstances.

Part of the concerns about the accuracy of Powerswitch could be resolved if it was able to obtain actual individual consumer data and use this in an automated way to determine the cost of different pricing options. This would require consideration of how automated consumer authorisation could be embedded in the comparison and switching service/website. The Authority’s decision to reform the comparison site and to put its provision out for competitive tender provides an opportunity to consider potential integration with actual consumer data.¹⁰

At present, if someone inputs an address into Powerswitch it will determine which retailer supplies the household but the site makes assumptions about the household’s consumption based on a series of questions about insulation, heating sources etc.¹¹ ConsumerNZ, the provider of Powerswitch, is advocating for data integration and has raised that “we are fast approaching a juncture where relying on estimates and assumptions will become insufficient.”¹²

The issue of integration was also raised by the Independent Electricity Retailers,¹³ Flick Electric (individually),¹⁴ Meridian and UDL in response to the Authority’s most recent consumer plan comparison and switching consultation. For example, we agree with Meridian that “Half-hourly consumption data may be required to properly compare the benefits of plans that have a time of use or flexible load control component and there is currently no way for consumers to easily input this

⁹ <https://www.ea.govt.nz/news/press-release/authority-decides-to-improve-comparison-and-switching/>

¹⁰ See the submission from 2degrees, Electric Kiwi, Flick Electric and Pulse Energy on these matters: https://www.ea.govt.nz/documents/5211/Independent_retailers_VaJFWdl.pdf.

¹¹ The Powerswitch site treats information on which retailer supplies any particular household as public information.

¹² https://www.ea.govt.nz/documents/5206/Consumer_NZ.pdf

¹³ https://www.ea.govt.nz/documents/5211/Independent_retailers_VaJFWdl.pdf

¹⁴ https://www.ea.govt.nz/documents/4888/Flick_dFicW8v.pdf

data for more accurate comparison of plans on the Powerswitch site.”¹⁵ We similarly agree with UDL’s advocacy for “A switching site that is able to provide real-time information”.¹⁶

While we agree with the Authority that there will be non-trivial “challenges ahead to achieving such a future” this does not obviate the importance of resolving these challenges in an expedient and timely manner. An obvious example of one of the challenges that needs to be addressed, raised by MBIE, is that “Alongside consent, there may also be issues relating to verification to ensure customers consent is properly given, it is important to ensure that customer identity will be verified by the data holder to protect customer privacy.”

Data access shouldn’t be at the expense of consumer privacy

The Independent Electricity Retailers are firmly of the view that consumer privacy needs to be at front and centre and any 3rd party access to consumer data needs tight rules round authorisation. Ensuring privacy is adequately protected, including not necessarily just relying on Privacy Act protections, has been an important focus of stakeholders.¹⁷

The current Bill fails to address data sharing and participation of 3rd parties (excluding accredited requestors) within the CDR regime. It is our view that this gap is a key risk and should be front-loaded within the primary legislation. Without clarification specifically on this point, our concern is that accredited requestors may on-share data freely with non-accredited parties. While the explanatory note of the Bill does state the existing protections of the Privacy Act will continue to apply except where the Bill states otherwise, this ‘gap’ means that the 3rd parties who receive customer data and therefore fall within the realm of the CDR ecosystem are not actually subject to any of its restrictions. Further to this, without any requirements as to what constitutes “informed consent” under clause 36 of the Bill, it may not be clear to customers that despite providing authorisation to a specific accredited requestor, their customer data is able to be disclosed and used by 3rd parties. Third parties may then use that customer data for a variety of purposes so long as their broad IPP3 requirements are met. This highlights the disconnect between the flexible, principle-based Privacy Act which does not cater for legislatively mandated data transfers and the CDR initiated action regime. Unless this gap is closed, uptake of the CDR within the electricity sector will likely be hamstrung by the erosion of customers’ trust and confidence via 3rd party involvement.

To the extent that our concerns are not addressed in the Bill, they should be addressed in the regulations, including when the ability to on-share data can arise and what safeguards need to be in place to protect the data if it leaves the permitted CDR ecosystem.

On the basis of the ‘disconnect’ between the Privacy Act and CDR regime discussed above, the Independent Electricity Retailers are also specifically concerned about the following:

- the interplay between the Privacy Act notifiable breach regime and the Bill. Since both a data holder and accredited requestor can hold the same customer data relating to an individual, it is unclear who will be required to notify the OPC when a privacy breach occurs. In reliance on the Privacy Act, if an accredited requestor suffers a privacy breach, it will be responsible for managing it and the required notifications. The data holder would not be liable/responsible and there would be no obligation on the accredited requestor to advise the data holder of the privacy breach. We seek clarification of this understanding; and

¹⁵ https://www.ea.govt.nz/documents/4898/Meridian_ol87P9R.pdf

¹⁶ https://www.ea.govt.nz/documents/5215/Utilities_Disputes.pdf

¹⁷ e.g. <https://www.mbie.govt.nz/dmsdocument/27729-consumer-advocacy-council-submission-customer-and-product-data-bill-pdf>

- it is important that data holders are made aware of what constitutes “informed consent” under clause 36(b) of the Bill. While the Independent Electricity Retailers support reliance in the Bill on the Privacy Act, IPP3 in this instance does not provide further clarity. The Privacy Act only requires organisations to take steps that are reasonable in the circumstances to make sure a customer is aware of the collection, use and sharing of their data. It does not mandate explicit customer consent for sharing of customer data or initiating an action on behalf of a customer. We suggest that it is clarified what the expectation is on data holders when it comes to obtaining valid “informed consent”. At a minimum, we would expect obligations to notify customers of the following:
 - what data is being shared as a result of their authorisation;
 - how it will be used (including by third parties as discussed above); and
 - what will happen if their consent does expire / if it is withdrawn.

Further to this, the consent itself should be actively and explicitly given, not able to be inferred from silence, or pre-selected tick box functions. Where relating to customer data transfer, the concept of disclosure should be central to any pre-authorisation messaging (including information about third parties, which based on current Bill would inform customers that the accredited requester may disclose the customer data to third parties who can use that data for their own purposes). Despite these recommendations eventuating in more onerous obligations on data holders, it is critical that consumer understanding of the CDR results in authorisation that data holders and requestors are able to act in reliance of, particularly in light of the current liability concerns under the Bill.

It will be important any accreditation regime has appropriate systems in place to not only act as a gate for initial accreditation but to also ensure the accredited party continues to have safeguards in place to protect consumer privacy and to meet the initial accreditation requirements. Accredited parties should be required to delete or de-identify customer data once it is no longer within the scope of the authorisation granted. Where de-identification is used, secondary legislation should specify what de-identification looks like on a sectorial basis.

We agree with the TCF that accredited requestors should be certified before they can hold and store large amounts of personal information, and “It will also be important that the regulator regularly check that accredited requestors are adequately protecting data and providing the service they promise to consumers.”¹⁸ We similarly agree with Meridian “the accreditation process should also require evidence of systems and capability to seek and maintain accurate customer consent records.”¹⁹

Privacy issues will add challenges that need to be worked through, for example, with options such as a central registry/integration into Powerswitch type arrangements which are designed to provide consumers with automatic information on retailer/tariff options.

We welcome and support the comments made by the Office of the Privacy Commissioner (OPC): “a general economy-wide right established under the Privacy Act could be combined with arrangements giving effect to that right in particular sectors. Such arrangements could take account of the specific features of a sector and existing regulatory frameworks in that sector. The sector-specific

¹⁸ <https://www.mbie.govt.nz/dmsdocument/27748-nz-telecommunications-forum-submission-customer-and-product-data-bill-pdf>

¹⁹ <https://www.mbie.govt.nz/dmsdocument/27745-meridian-submission-customer-and-product-data-bill-pdf>

arrangements could also be more prescriptive about requirements for that sector. OPC would be happy to discuss options for combining general and sector-specific data portability rights.”²⁰

Authorisation

While clauses 36 and 37 of Part 3 of the Bill governs customer authorisation, secondary regulation is needed so that it is clear to data holders and accredited requestors what the maximum period for reliance on a customer’s authorisation is. In the absence of specific regulation under clause 37 (a) and (b), there is a risk that customers (or secondary users on their behalf) may fail to specify an expiry date to their authorisation. With no inclusion of a safe harbour regime within the Bill, unintended liability for data holders or accredited requestors may occur. A renewal mechanism for expired consent should also be considered.

Consumption data is held and provided by meter providers

The incumbent gentailer representative body, ERANZ, has noted “retailers are not owners of a household’s electricity consumption data but are ... users of the data through contracts with metering equipment providers.”²¹ BusinessNZ similarly has noted “electricity retailers are not necessarily the owners of data per se, but rather the users of data.”²²

Retailers obtain consumption data from the meter equipment provider.

It is most likely that it will be efficient for the relationship/data access for any potential central registry²³/Powerswitch type service/accredited 3rd parties (under the MBIE CDR regime) to be directly from the meter equipment provider.

Clear understanding of compliance costs is needed

Care is needed to avoid unnecessary or inefficient additional costs which may be ultimately borne by consumers. We are particular concerned to see the Authority understating compliance implications recently for its proposed Consumer Care Obligations and now for consumer data provision (see discussion below).

We share Spark’s concern that “The costs of implementing a CDR will be significant”, “It is important that the costs to industry are fully understood so they can feed into the cost benefit analysis.”²⁴

The Authority and MBIE should consider the experience/learnings from Australia, Europe and the United Kingdom. The costs in relation to Australian CDR reforms have been much higher than was expected by policy makers.²⁵ It will be important to be clear about the extent this was due to country specific matters and if there are any learnings which New Zealand can draw on.

²⁰ <https://www.mbie.govt.nz/dmsdocument/13250-office-of-the-privacy-commissioner-submission-on-discussion-document-options-for-establishing-a-consumer-data-right-in-new-zealand-pdf>

²¹ <https://www.mbie.govt.nz/dmsdocument/13187-eranz-submission-on-options-for-establishing-a-consumer-data-right-in-new-zealand-pdf>

²² <https://www.mbie.govt.nz/dmsdocument/13286-submission-by-businessnz-to-the-ministry-of-business-innovation-employment-on-the-options-for-establishing-a-consumer-data-right-in-new-zealand-discussion-document-pdf>

²³ Flick Electric has suggested establishing a central registry: https://www.ea.govt.nz/documents/4888/Flick_dFicW8v.pdf.

²⁴ <https://www.mbie.govt.nz/dmsdocument/13283-spark-submission-on-options-for-establishing-a-consumer-data-right-in-new-zealand-pdf>

²⁵ <https://treasury.gov.au/sites/default/files/2024-08/p2024-512569-report.pdf>

We also agree with Spark that there should be a phased implementation to different sectors.²⁶ The Government intention to explore designating the banking sector first, under the MBIE CDR proposals, would provide a window to test how the new regime is working/what the compliance costs are like before extending to electricity or other sectors.

Electricity Authority proposed Code amendments – Q2.1

The Authority asserts “five business days is too long” for responses to consumer data requests. According to the Authority, “several stakeholders indicated five business days acts as a barrier to consumers utilising [innovative products]/tools effectively, and therefore limits their access to innovative products on the market”. The Authority clarified these submissions were from Common Grace Aotearoa, Consumer NZ, Cortexo and Dr David Hingston.²⁷ On our review of the submissions, they advocated for real-time data access not the Authority proposal. For example, Common Grace Aotearoa’s submission was specific to Powerswitch and provision of data directly from metering providers.

We do not consider the statement that “The Authority considers the costs of implementing the proposals to be negligible” or “there should be little additional cost to retailers for proving this information in a timelier manner (proposal 1)” to be reasonable or has valid foundation.

We appreciate that the Authority clarified to us its view on this but don’t consider it valid to assume “because the requirement to respond to a request for data within five days has been in place for seven years now” it follows that “it is reasonable to expect retailers to have sufficient systems and processes in place” to process the majority of these requests within 1 working day.²⁸ This would be equivalent to arguing there would be no cost to the Electricity Authority if the time limit on Official Information Act requests was reduced to 70% within 4 business days, and 90% within 8 business days.

It should be acknowledged electricity retailers have done a lot to bring down the average response time for data requests but collectively have not gotten to the point where the Authority’s proposals could be met without process and system changes (which are not costless).²⁹ These costs would be higher for a 1-day response time requirement which would require different systems and processes to comply with than the current 5-day requirement. Different retailers may be in different situations in terms of their internal systems and what information they can provide in real-time/how quickly information can be provided. There can also be issues with access to metering data from a property (where it is not obtained remotely from a smart meter) etc.

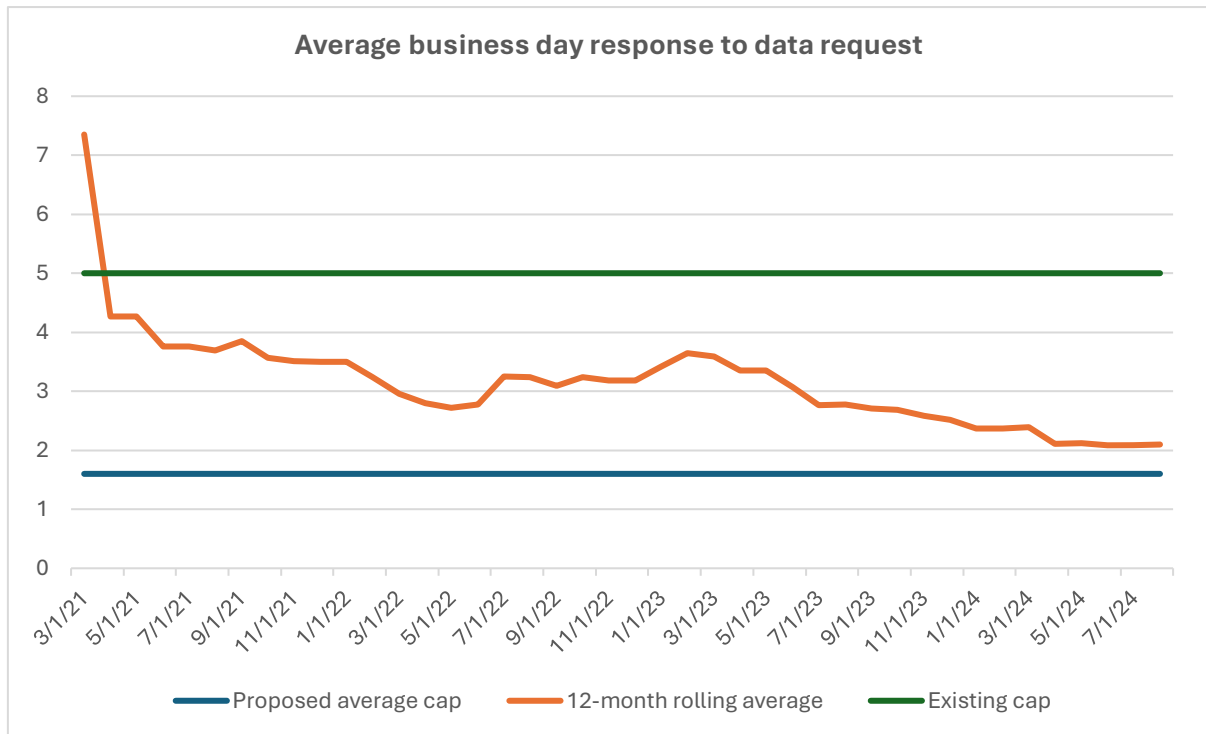
²⁶ <https://www.mbie.govt.nz/dmsdocument/13283-spark-submission-on-options-for-establishing-a-consumer-data-right-in-new-zealand-pdf>

²⁷ E-mail dated 17 September 2024.

²⁸ E-mail dated 17 September 2024.

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<https://www.emi.ea.govt.nz/Retail/Reports/CMYNSC?DateFrom=20200401&DateTo=20240831&Direction=Res&Entity=Grp&Measure=AvgBD&Show=Cnt&rsdr=ALL&si=mdi%7C36284590-96c2-462a-a711-d147302740fa,mdrbk%7C2680,mds%7C3,s%7Cmdo,dr DateFrom%7C20200401,dr DateTo%7C20240831,dr Direction%7CRes,dr Entity%7CGrp,dr Measure%7CAvgBD,dr Show%7CCnt,dr rsdr%7CALL,v%7C4>



To illustrate the point, compliance with proposal 1 would require an average response time of 1.6 days or less. Based on Electricity Authority data this would require most, if not all, electricity retailers to improve their response times – both on average and in relation to maximum response times – with significant variation in the extent to which different retailers would need to reduce their response times.³⁰

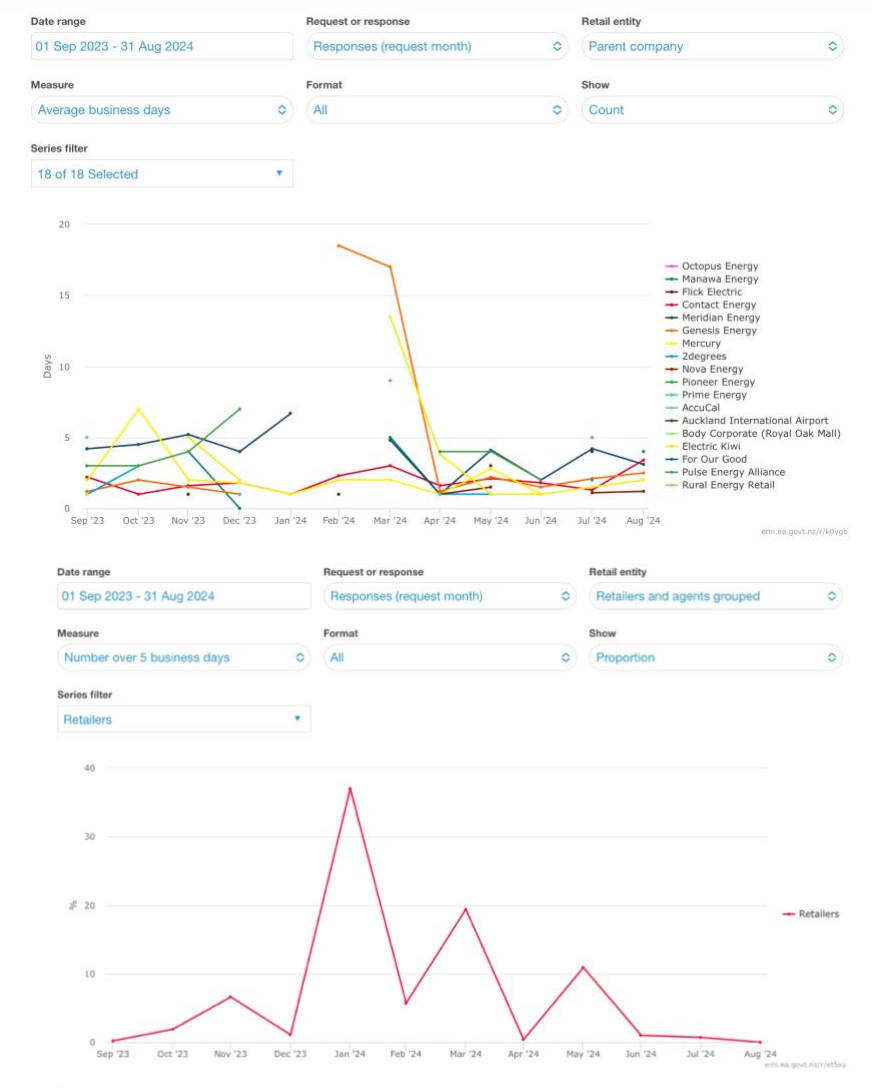
Using Meridian over the last 12 months as a case study:

- Meridian’s average response time was 3.14 business days, well below the current regulated cap of 5 business days but nearly double the average of the Authority proposal.
- When Meridian received a data request, the level of non-compliance with the 5-business day requirement ranged from 0.4% to 83.3%.

While individual retailer performance varies, overall retailers are not fully compliant with the 5-business day cap so it is difficult to see how complying with 1 business day requirement for most requests would be costless – based on the Meridian example and EMI data.

³⁰

<https://www.emi.ea.govt.nz/Retail/Reports/CMYNSC?DateFrom=20230901&DateTo=20240831&Direction=Res&Entity=RPC&Measure=AvgBD&Show=Cnt&seriesFilter=ALL&rsdr=L12M&si=mdi%7C36284590-96c2-462a-a711-d147302740fa.mdrbk%7C2688.mds%7C3,s%7Cmdo,v%7C3>



We recommend the Authority analyse the distribution of response times of each electricity retailer to determine what would be a reasonable regulated increase in response times without imposing undue additional compliance/system change costs. This should result in a lessor expectation about how rapidly requests are responded to than the Authority’s initial proposal.

Based on current industry practices – if the Authority wants to manage compliance costs as part of the transition to the new CDR regime – we would suggest a move to requiring a minimum requirement of 3 business days for a certain percentage of requests to be complied with.

Electricity Authority proposed Code amendments – Other

- Proposed clauses (1A)(a) and (b): “in any 12-month period” should be changed “in any **financial year**” (as defined in the Code). This will make compliance monitoring more straightforward for both retailers and the Authority and allow for consistent reporting (if applicable).
- Q2.2 and 2.3: The Independent Electricity Retailers support proposals 2 and 3.
- The Authority asserts its proposals would reduce consumer complaints but provides no explanation or evidence to support this. The Authority should be able to provide data on the specific types of complaints that it considers would be reduced and why.

- Q2.4: Alternative options: The alternative options should include (i) the Authority’s proposals with a moderated version of proposal 1; and (ii) relying on MBIE CDR reform. Alternative (ii) would be consistent with MBIE’s adoption of the Authority proposal as its counterfactual/alternative.

Concluding remarks




The Independent Electricity Retailers welcome consideration of consumer data access reform. Access to consumption data is likely to become increasingly useful/important – as illustrated by the increasing complexity of electricity retail tariff options (moving from one dimensional fixed + variable charge tariffs to tariffs with ‘free’ power, time-of-use charging etc).

We support enabling consumers to access and securely share their data with service providers/3rd parties, so long as they are accredited requestors.

It will be important to consider how the full potential benefits of data access reform can be realised; including through integration with the price comparison and switching service, currently provided by Powerswitch, as well as being clear about the costs that will be imposed on market participants. Any costs need to be justified by clear consumer benefits as they ultimately be passed through into higher retail tariffs. Experience in Australia provides a salutary lesson about the potential compliance cost risks.

The Independent Electricity Retailers look forward to working with the Authority and MBIE as the reforms are progressed and they work through how the respective agency’s reforms will work together in a complementary manner.

Yours sincerely,

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